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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KEITH L. DROLLINGER,

Plaintiff,

Civil No. 08-1216-CL

v.

REPORT AND
RECOMMENDATION

DAVID ROSCO CARLSON, et al.,

Defendants.

CLARKE, Magistrate Judge.

Plaintiff, an inmate at the Snake River Correctional Institution, filed a complaint under 42 U.S.C. § 1983 and moved to proceed in forma pauperis (#1). Plaintiff's application did not authorize the payment of the filing fee through deductions from plaintiff's inmate trust account.

By Order (#5) entered October 27, 2008, plaintiff was advised that pursuant to the Deficit Reduction Act of 2005, the filing fee for a civil action is \$350. Plaintiff was

further advised:

"Should plaintiff wish to proceed with this case, he shall notify the court within 30 days of the date of this order whether or not he authorizes the withdrawal of the full filing fee of \$350 from his prison trust account.

Plaintiff is advised that if he authorized the payment of the fee he will be obligated to make monthly payments of 20 percent of the preceding month's income credited to his trust account. These payments shall be collected and forwarded by the agency having custody of plaintiff to the Clerk of the Court each time the amount in plaintiff's trust account exceeds \$10.00, until the filing fee of \$350 is paid in full.

If plaintiff declines to authorize the withdrawal, or if he fails to respond to this Order within 30 days, he will not be charged a filing fee and his case will be dismissed without prejudice."

On November 24, 2008, plaintiff filed an "Answer to Court Order" (#9). Plaintiff's "Answer" alleged matters about his financial status and requested that the filing fee be "waived." Plaintiff did not authorize the deduction of the filing fee as explained in the court's Order.

Accordingly, this case should be dismissed without prejudice for failure to comply with a court order and failure to prosecute. Plaintiff's "Ex parte Motion for Pre-trial Appearance by Televideo Communication (#6) should be denied as moot.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written

objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

IT IS SO ORDERED

DATED this 28 day of ~~October~~, 2008.



Mark D. Clarke
United States Magistrate Judge